



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 39 (as introduced 1-18-17)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 1-23-17

CONTENT

The bill would amend Article II (Intestacy, Wills, Donative Transfers) of the Estates and Protected Individuals Code (EPIC) to do the following in provisions governing the effect of a divorce, annulment, or separation on the status of a person as a surviving spouse:

- **Revise an exception regarding who constitutes a surviving spouse for purposes of decisions about a decedent's funeral arrangements and the disposition of the decedent's remains.**
- **Refer to a "married couple" rather than a "husband and wife".**

Under Section 2801 of EPIC, an individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of that provision. The bill would refer to the status of married couple rather than the status of husband and wife.

Section 2801 also identifies individuals who are not included as a surviving spouse for purposes of Parts 1 through 4 of Article II. (Those sections, respectively, pertain to intestate succession (inheritance in the absence of a valid will); the elective share of a surviving spouse; a spouse or child not provided for in a will; and exempt property and allowances.) The excluded individuals are the following:

- An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in Michigan, unless they subsequently participate in a marriage ceremony purporting to marry each other or live together as husband and wife.
- An individual who, following an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third individual.
- An individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.
- An individual who, at the time of the decedent's death, is living in a bigamous relationship with another individual.
- An individual who did any of the following for one year or more before the decedent's death: was willfully absent from the decedent spouse; deserted the decedent spouse; or willfully neglected or refused to provide support for the decedent spouse if required to do so by law.

In the first item above, the bill would refer to living together as a married couple rather than as husband and wife.

In addition, for purposes of Section 3206 of EPIC, a surviving spouse does not include any of the individuals listed above or an individual who was a party to a divorce or annulment proceeding with the decedent at the time of the decedent's death. Under the bill, for purposes of that section, a surviving spouse would not include any of the individuals in the first four items listed above or an individual who was a party to a divorce or annulment proceeding with the decedent at the time of the decedent's death.

(Under Section 3206, described below, a designated funeral representative or a person with priority or otherwise acting under that section has the rights and powers to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including decisions about cremation and the right to possess cremated remains.)

The bill would take effect 90 days after its enactment.

MCL 700.2801

BACKGROUND

Section 3206 of the Estates and Protected Individuals Code specifies individuals who are authorized to make decisions about a decedent's funeral arrangements and the disposition of a decedent's body. These include a person given priority under that section or, if none exists, a person acting in a certain capacity (such as a personal representative or a guardian). As a rule, a person having priority is the surviving spouse or, if there is no surviving spouse, the individual or individuals at least 18 years of age in the highest priority under Section 2103 of EPIC, and related to the decedent in the closest degree of consanguinity (by blood). (Section 2103 specifies the order of priority of inheritance when a person dies without a valid will.)

Despite these statutory instructions, there often is confusion, disagreement, or controversy over who may make those decisions. For example, the legal authority to decide might fall to someone who was related to but estranged from the decedent or who was distantly related but was not personally close to the decedent. It was suggested that, in some cases, it might be appropriate for someone close to the decedent, but not related to him or her, to decide about funeral arrangements and the disposition of the body.

As a result, Public Act 57 of 2016 amended Section 3206, effective June 27, 2016, to include a designated funeral representative among the individual who are authorized to make decisions about a decedent's funeral arrangements and the disposition of the body. Under the provisions enacted by Public Act 57, an adult of sound mind (a "declarant") may designate another adult as his or her funeral representative. The section lists individuals who may not act as a funeral representative for a declarant unless an individual on the list is the surviving spouse or is a relative of the declarant. The list includes, for example, a health professional who provided medical treatment or nursing care to the declarant during the final illness.

Public Act 57 also amended Section 2801 to indicate individuals who are not a surviving spouse for purposes of Section 3206.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.